



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

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**DECISION OF THE BOARD**

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Mailed and Filed: JUNE 14, 2022

IN THE MATTER OF:

Appeal Board No. 621597

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 621597, 621598 and 621599, the Commissioner of Labor appeals from the decisions of the Administrative Law Judge filed February 14, 2022, which overruled the initial determinations holding the claimant ineligible to receive benefits, effective June 1, 2021 through September 1, 2021, on the basis that the claimant was not capable of work; charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$1,630 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$3,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and reducing the claimant's right to receive future benefits by 56 effective days and charging a civil penalty of \$694.50 on the basis that the claimant made willful misrepresentations to obtain benefits.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance by the claimant. The Board considered the arguments contained in the written statement submitted on behalf of the Commissioner of Labor.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant filed a claim for benefits on June 25, 2020. In June 2021, the claimant was pregnant. The claimant had a routine pregnancy, without complication, and only saw her doctor for routine prenatal

care; she was able to work and seeking work throughout her pregnancy. The claimant went into labor on June 22, 2021 and was admitted to the hospital; she gave birth on June 22, 2021 and was hospitalized through June 23, 2021. Upon her release from the hospital, the claimant continued to be able to work and sought work; there were no restrictions placed on her ability to work after giving birth.

The claimant certified for benefits on each week at issue, including on June 27, 2021 for the week ending June 27, 2021. With each certification, including the certification for week ending June 27, she reported that there were no days on which she was not ready, willing, and able to work although she knew that she was hospitalized on June 22 and June 23. The claimant received \$3,000 in FPUC benefits and \$1,630 in PEUC benefits.

OPINION: The credible evidence establishes that the claimant was not capable of work on June 22 and June 23, 2021. The claimant's credible and uncontroverted testimony establishes that she was able to work throughout her pregnancy as well as after she gave birth as she had a routine pregnancy without complications and her activities were not restricted either before or after giving birth. However, her testimony also establishes that she was admitted to the hospital on June 22, gave birth that day and remained hospitalized on June 23. On appeal, the Commissioner of Labor does not contest that the claimant was capable of work during her pregnancy or after her release from the hospital and contends only that she was not capable of work on the day on which she gave birth and while she was hospitalized. We agree. We have long held that a claimant is not capable of work on the day she gives birth or while still hospitalized (see, Appeal Board Nos. 561955 and 559675 A). Accordingly, we conclude that the claimant was capable of work for the period at issue, except for on June 22 and June 23 when she was giving birth and hospitalized.

The claimant does not contest that she received the benefits at issue, including benefits for the week ending June 27, 2021. As she was not capable of work on June 22 and June 23, the PEUC benefits she received for those two days constitute an overpayment. The overpaid PEUC benefits are recoverable since the claimant's certification for the week ending June 27 reporting that she was ready, willing, and able to work each day that week was factually false. With respect to the FPUC benefits, a claimant is entitled to FPUC benefits for any week in which she was eligible for at least \$1 of PEUC benefits. As the claimant was eligible for at least \$1 of PEUC benefits for

the week ending June 27, she was eligible for the FPUC benefits she received for that week.

With respect to remaining issue of willful misrepresentation to obtain benefits, since the claimant was able to work prior to giving birth as well as after she was released from the hospital, her certifications reporting that she was ready, willing, and able to work in each week were accurate, except for her certification for the week ending June 27. The claimant knew or should have known that she was not capable of work on the day she gave birth and while she remained hospitalized. As such, her certification for the week ending June 27 constitutes a willful misrepresentation for Unemployment Insurance purposes. Accordingly, forfeit and civil penalties were properly imposed for the claimant's certification of June 27, 2021, only.

DECISION: The decisions of the Administrative Law Judge are modified as follows and, as so modified, are affirmed.

In Appeal Board No. 621597, the initial determination, holding the claimant ineligible to receive benefits, effective June 1, 2021 through September 1, 2021, on the basis that the claimant was not capable of work, is modified to be effective, June 22, 2021 through June 23, 2021, and, as so modified, is sustained.

In Appeal Board No. 621598; the initial determination charging the claimant with an overpayment of Pandemic Emergency Unemployment Compensation (PEUC) of \$1,630 recoverable pursuant to Section 2107 (e)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020; and charging the claimant with an overpayment of Federal Pandemic Unemployment Compensation (FPUC) of \$3,000 recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is modified, to charge the claimant with a recoverable overpayment of two days of PEUC benefits, only.

In Appeal Board No. 621599, the initial determination reducing the claimant's right to receive future benefits by 56 effective days and charging a civil penalty of \$694.50 on the basis that the claimant made willful misrepresentations to obtain benefits, is modified, to charge the claimant with forfeit and civil penalties for the week ending June 27, 2021, only, and, as so modified, is sustained.

These combined matters are referred back to the Department of Labor for

recalculation of the amount of overpaid PEUC benefits as well as the forfeiture and civil penalties to be imposed in accordance with this decision.

The claimant is allowed benefits, in part, and denied benefits, in part, with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER